

APPENDIX

TABLE OF CONTENTS

	Page
Fifteenth Amendment to the U.S. Constitution.	A-1
42 U.S.C.A. § 1973 (West 1981).	A-1
42 U.S.C.A. § 1973c (West 1981).	A-1, 2, 3
Act No. 79-652, Acts of Alabama 1979	A-4, 5
<i>Alabama Code</i> , 1975, § 23-1-80 (Michie 1989 Repl. Vol.)	A-5, 6
<i>Alabama Code</i> , 1923, § 1347 (Michie)	A-6, 7
<i>Alabama Code</i> , 1940, Title 23 § 43 (Michie)	A-7, 8
<i>Alabama Code</i> , 1975, § 11-6-3 (Michie 1989 Repl. Vol.)	A-8
<i>Alabama Code</i> , 1940, Title 12 § 69 (Michie)	A-9
Stipulated Testimony of Lynda K. Oswald. .	A-10, 11, 12
Breakdown of Roadway Mileage Maintained or Under Jurisdiction of Russell County by Com- mission Districts.	A-13
Deposition of John Belk	A-14, 15
Deposition of Charles Adams	A-16, 17
Deposition of Nathaniel Gosha.	A-18, 19
Deposition of Ed P. Mack.	A-20
Deposition of Jerome Gray.	A-21



FIFTEENTH AMENDMENT TO THE U.S. CONSTITUTION

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

42 U.S.C.A. § 1973 (West 1981)

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

42 U.S.C.A. § 1973c (West 1981)

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting

qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if

the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Act No. 79-652

H. 977 - Adams (C), Whatley

AN ACT

Relating to Russell County: to provide that all functions, duties and responsibilities for the construction, maintenance and repair of public roads, highways, bridges and ferries in the county shall be vested in the county engineer and shall be maintained on the basis of the county as a whole, without regard to district or beat lines, and to prescribe certain duties for the county engineer.

Be It Enacted by the Legislature of Alabama:

Section 1. All functions, duties and responsibilities for the construction, maintenance and repair of public roads, highways, bridges and ferries in Russell County are hereby vested in the county engineer, who shall, insofar as possible, construct and maintain such roads, highways, bridges and ferries on the basis of the county as a whole or as a unit, without regard to district or beat lines.

Section 2. The county engineer shall assume the following duties, but shall not be limited to such duties:

(1) to employ, supervise and direct all such assistants as are necessary properly to maintain and construct the public roads, highways, bridges, and ferries of Russell County, and he shall have authority to prescribe their duties and to discharge said employees for cause, or when not needed; (2) to perform such engineering and surveying service as may be required, and to prepare and maintain the necessary maps and records; (3) to maintain the necessary accounting records to reflect the cost of the

county highway system; (4) to build, or construct new roads, or change old roads, upon the order of the county commission; (5) insofar as is feasible to construct and maintain all country [sic] roads on the basis of the county as a whole or as a unit.

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 3. All laws or parts of law which conflict with this act are hereby repealed.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved July 30, 1979

Time: 6:00 P.M.

Alabama Code, 1975, § 23-1-80 (Michie 1989 Repl. Vol.)

The county commissions of the several counties of this state have general superintendence of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as practicable. To this end, they have legislative and executive powers, except as limited in this chapter. They may establish, promulgate and enforce rules and regulations, make and enter into such contracts as may be necessary or as may be deemed necessary or advisable by such

commissions to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties, and regulate the use thereof; but no contract for the construction or repair of any public roads, bridge or bridges shall be made where the payment of the contract price for such work shall extend over a period of more than 20 years. (Code 1923, § 1347; Acts 1927, No. 347, p. 348; Code 1940, T. 23, § 43; Acts 1953, No. 729, p. 984.)

Alabama Code, 1923, § 1347 (Michie).

1347. (5765) Powers of courts of county commissioners with regard to roads, bridges and ferries. – The courts of county commissioners, boards of revenue, or other like governing bodies of the several counties of this state have general superintendence of the public roads, bridges and ferries within their respective counties, and may establish new, and change and discontinue old roads, bridges and ferries in their respective counties so as to render travel over the same as safe and convenient as practicable. To this end they have legislative, judicial, and executive powers, except as limited in this article. Courts of county commissioners, boards of revenue, or courts of like jurisdiction are courts of unlimited jurisdiction and powers as to the construction, maintenance and improvement of the public roads, bridges and ferries in their respective counties, except as their jurisdiction or powers may be limited by the local or special statutes of the state. They may establish, promulgate and enforce

rules and regulations, make and enter into such contracts as may be necessary, or as may be deemed necessary or advisable by such courts, or boards, to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties, and regulate the use thereof; but no contract for the construction or repair of any public road, bridge or bridges shall be made where the payment of the contract price for such work shall extend over a period of more than ten years.

Alabama Code, 1940, Title 23 § 43 (Michie).

§ 43. (1347) Powers of courts of county commissioners with regards to roads, bridges and ferries. – The courts of county commissioners, boards of revenue, or other like governing bodies of the several counties of this state have general superintendence of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as practicable. To this end they have legislative, judicial and executive powers, except as limited in this chapter. Courts of county commissioners, boards of revenue, or courts of like jurisdiction are courts of unlimited jurisdiction and powers as to the construction, maintenance and improvement of the public roads, bridges and ferries in their respective counties, except as their jurisdiction or powers may be limited by the local or special statutes of the state. They may establish, promulgate and enforce rules and regulations, make and enter into such contracts

as may be necessary, or as may be deemed necessary or advisably by such courts, or boards, to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties, and regulate the use thereof; but no contract for the construction or repair of any public roads, bridge or bridges shall be made where the payment of the contract price for such work shall extend over a period of more than ten years. (1927, p. 348.)

Alabama Code, 1975, § 11-6-3 (Michie 1989 Repl. Vol.)

It shall be the duty of the said county engineer or chief engineer of the division of public roads, subject to the approval and direction of the county commission to:

(1) Employ, supervise and direct such assistants as are necessary to construct and maintain properly the county public roads, highways and bridges;

(2) Perform such engineering and surveying services as may be required to prepare and maintain the necessary maps, plans and records;

(3) Maintain the necessary accounting records to reflect the cost of constructing and maintaining the county highway system; and

(4) Perform such other duties as are necessary and incident to the operation of the county highway system as directed by the county commission. (Acts 1971, No. 1945, p. 3143, § 4.)

Alabama Code, 1940, Title 12 § 69 (Michie)

§ 69. Duties under supervision of county governing body. – It shall be the duty of said county engineer, subject to the approval and direction of the court of county commissioners or like governing body of the county to: (1) Employ, supervise and direct such assistance as are necessary to properly maintain and construct the county public roads, highways and bridges; (2) perform such engineering and surveying service as may be required and to prepare and maintain the necessary maps and records; (3) maintain the necessary accounting records to reflect the cost of the county highway system, and (4) perform all other duties necessary and incident to the operation of a county highway system. (Ib.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ED PETER MACK, et al.)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 89-T-459-E
vs.)	
RUSSELL COUNTY)	
COMMISSION, et al.)	
Defendants.)	

STIPULATED TESTIMONY OF LYNDA K. OSWALD

COME NOW parties to the foregoing cause of action and stipulate that if Lynda K. Oswald were present, she would testify as follows:

"I am Lynda K. Oswald, an assistant attorney general with the Office of the Attorney General, State of Alabama, and have been so employed for over ten years.

"As a part of my duties I review all legislative acts to determine which should be submitted for preclearance under Section 5 of the Voting Rights Act of 1965. I reviewed Act No. 79-652 at the time of its passage to determine if it should be submitted for pre-clearance under the Voting Rights Act. It was my determination that the provisions of Act No. 79-652 had no effect on voting or elections in this state. Therefore, I concluded that it was not necessary to submit Act No. 79-652 to the Justice Department for pre-clearance, and it was not submitted.

"Act No. 79-652 concerns Russell County and provides that the functions, duties and

responsibilities for construction, maintenance and repair of public roads and bridges in that county are to be vested in the county engineer and maintained on the basis of the county as a whole without regard to district or beat lines. I have reviewed other acts of similar nature establishing what is known as the unit system, and it has been my opinion, as it is now, that such acts do not come within the ambit of the Voting Rights Act of 1965 so as to require pre-clearance.

"I concluded that Act No. 79-652 had no effect on voting or elections in this state, and I determined that Act No. 79-652 was a modification of duties relating to the maintenance of roads in Russell County and did not affect or dilute the voting power of any group of voters. Act No. 79-652 provided that the functions, duties and responsibilities relating to roads in Russell County were to be vested in the county engineer and maintained on the basis of the county as a whole without regard to district or beat lines. I am aware of the decision in *Hardy v. Wallace*, 603 F.Supp. 174 (N.D. Ala. 1985) and that court ruling does not change my opinion that it is not necessary to obtain preclearance of Act No. 79-652."

As a result of this stipulation, parties hereto consent to this testimony being used in lieu of a deposition.

/s/ John C. Falkenberry
John C. Falkenberry,
one of the Attorneys
for Plaintiffs

JOHN C. FALKENBERRY
Fifth Floor, Title Building
300 North 21st Street
Birmingham, Alabama 35203

/s/ James W. Webb
James W. Webb
Attorney for Defendant
Russell County

OF COUNSEL:

WEBB, CRUMPTON, McGREGOR,
SASSER, DAVIS & ALLEY
One Commerce Street, Suite 700
P.O. Box 238
Montgomery, AL 36101-0238
(205) 834-3176

A-13

BREAKDOWN OF ROADWAY MILEAGE MAINTAINED OR UNDER JURISDICTION

<u>DISTRICT NO.</u>	<u>TOTAL MILES</u>		<u>PAVED ROADS</u>	
			<u>TOTAL MILES</u>	
1	6.25	1.1% **	6.25	2%
2	51.87	9.5%	42.17	15%
3	2.45	.4% **	2.45	.9%
4	1.3	.2% **	1.1	.4%
5	73.92	13.8% *	46.02	16%
6	138.15	25.2%	72.3	25.5%
7	271.40	49.6%	113.05	40%
	545.34		283.34	

* 20.12 square miles of District 5 lies within U.S. Government jurisdiction and is included in the above breakdown.

** Maintained by Phenix City Public Works Department.

WORK DISTRICT

<u>DISTRICT NO.</u>	<u>TOTAL MILES</u>	<u>PAVED ROADS</u>
		<u>TOTAL MILES</u>
1	179.49	126.98
2	213.89	92.10
3	151.96	64.26
	545.34	283.34

N OF RUSSELL COUNTY BY COMMISSION DISTRICTS

DIRT ROAD		AREA	
<u>TOTAL MILES</u>		<u>SQUARE MILES</u>	
0	0	3.8	.6%
9.7	3.7%	18.4	3.0%
0	0	4.48	.72%
.2	.08%	2.32	.37%
27.9	10.7%	76.08	12.3%
65.85	25%	143.36	23.2%
158.35	60.2%	370.44	59.9%
262.00		618.88	

ment property (Ft. Benning). This area is not

CTS

UNPAVED ROADS TOTAL MILES

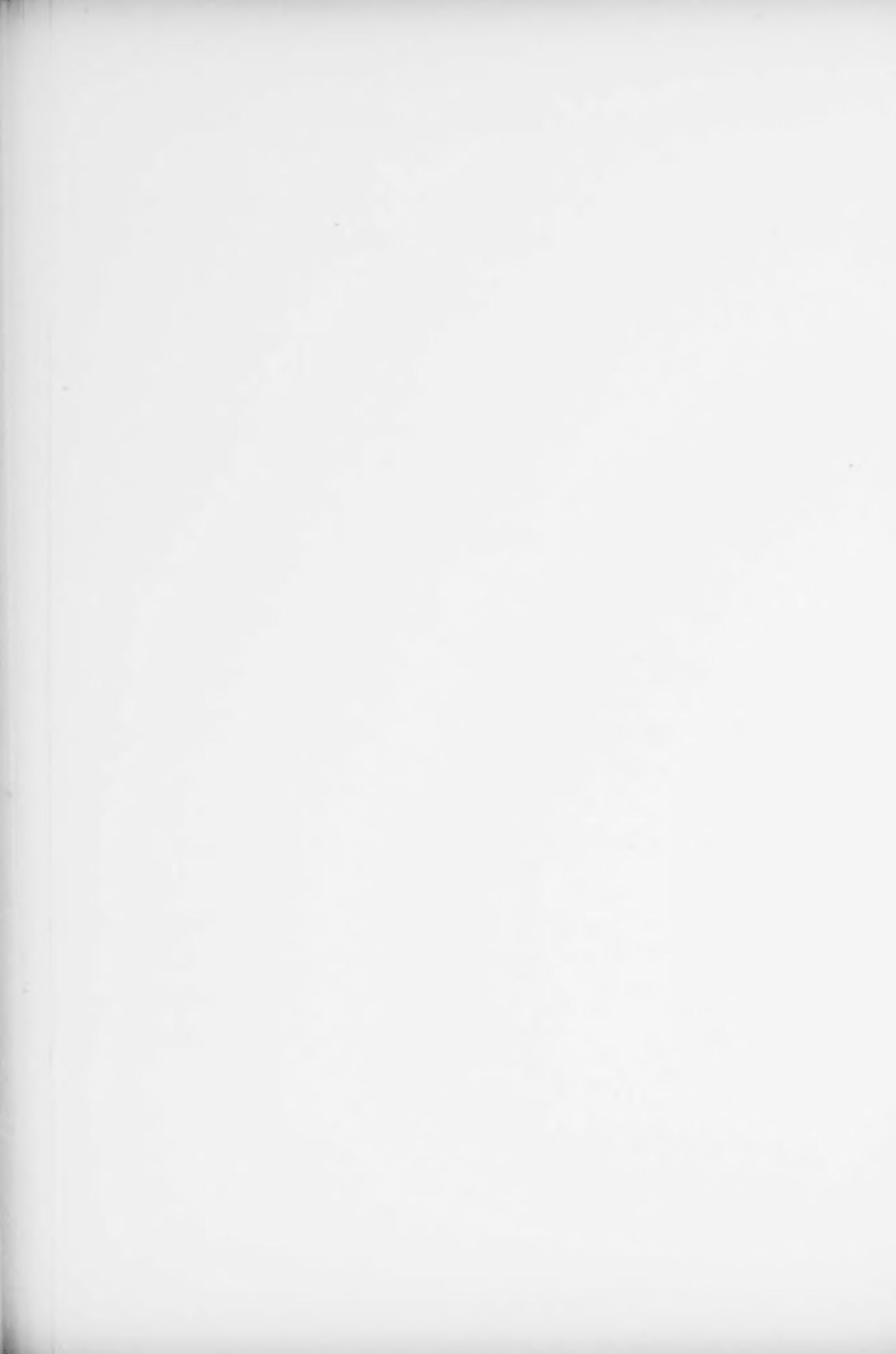
52.51

121.79

87.70

262.00

Exhibit B



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
EASTERN DIVISION

ED PETER MACK, ET AL.,)	
)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 89-T-459-E
vs.)	
)	
RUSSELL COUNTY)	
)	
COMMISSION, et al.,)	
)	
Defendants.)	

DEPOSITION OF JOHN BELK

The deposition of JOHN BELK was taken pursuant to stipulation and agreement before Jackie Parham, court Reporter and Commissioners for the State of Alabama at Large, at the Russell County Courthouse, Phenix City, Alabama, on Friday, January 26, 1990, commencing at approximately 9:00 a.m.

[p. 8] Q. Prior to passage of Act Number 79-652?

A. Yes, sir. we implemented the Unit System at that time. And, of course, Mr. Adams was going to - to get the necessary legislation to make it a law.

Q. Tell me, what brought this about?

A. Well, the main thing that brought it about was one commissioner was indicted and charged with an illegal use of county funds. I would say that's the last thing that brought it on.

Really, generally, the fact that we needed a little bit more control over expenditures and work orders was basically the reason for going - not having three different county shops and three

different county commissioners in charge of three different areas.

Q. All right, sir. Did you ever divide the budget [p. 9] prior to that when you - When you were under the District System did you divide the budget up according to the districts?

A. No, sir.

* * *

[p. 10] Q. . . . is it your testimony and do I understand correctly that prior to May 18, 1979 there was a unified budget for the county with respect to the - to the three separate, what I would call, road camps?

A. Yes, sir. There was never any discretion between the three. It was always adopted as far as a general budget for the county.

Q. How many commissioners were there?

A. Five.

Q. Five at that time?

A. Yes, sir.

Q. Is it true that prior to May 18, 1979 only three of them had responsibilities for overseeing the operation of these road camps?

A. Yes, sir.

* * *

[p. 20] Q. In size were they relatively the same in terms of the physical area and also the number of employees?

A. Yes, sir. In fact, the districts were established according to road miles. So they all had pretty much the same number of miles and the same number of bridges to maintain.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
EASTERN DIVISION

ED PETER MACK, ET AL.,)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 89-T-459-E
vs.)	
RUSSELL COUNTY)	
COMMISSION, et al.,)	
Defendants.)	

DEPOSITION OF CHARLES ADAMS

The deposition of CHARLES ADAMS was taken pursuant to stipulation and agreement before Jackie Parham, court Reporter and Commissioners for the State of Alabama at Large, at the Russell County Courthouse, Phenix City, Alabama, on Friday, January 26, 1990, commencing at approximately 9:30 a.m.

[p. 8] Q. In view of the fact that the county had already adopted the resolution prior to -

A. So in discussing it with them - and I believe the suggestion was even made that they would do it by resolution, wouldn't be any further act. But we felt we needed something stronger in place. We needed something in place that would assure that it would be complied with, that -

Q. That the commission wouldn't backtrack?

A. That they wouldn't come back and pass another resolution at the next meeting and say, no, we've changed our mind.

* * *

[p. 13] Q. All right. And was that, as I understand it, due at least in some measure to the problems that commissioner - then Commissioner Lake had had?

A. To some degree. And with recommendations by [p. 14] the Highway Department, you know, and the stories they would relate about the benefits of this system and the experiences in some other counties and that type thing.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
EASTERN DIVISION

ED PETER MACK, ET AL.,)	
)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 89-T-459-E
vs.)	
)	
RUSSELL COUNTY)	
COMMISSION, et al.,)	
)	
Defendants.)	

DEPOSITION OF NATHANIEL GOSHA

The deposition of NATHANIEL GOSHA was taken pursuant to stipulation and agreement before Jackie Parham, court Reporter and Commissioners for the State of Alabama at Large, at the Russell County Courthouse, County Commission Hearing Room, Phenix City, Alabama, on Thursday, January 29, 1989, commencing at approximately 9:00 a.m.

[p. 17] Q. Did you vote for the budget:

A. Yes, sir.

* * *

[p. 36] A. . . . Let's back up one notch. Talking about the system, the unit system, if we're going to run a unit system, I prefer and the black citizens of Russell County prefer, let's give it all to Mr. James McGill and let Mr. James McGill administrate it.

* * *

[p. 82] A. From this thing here, I would like for the Court to look into and if they find any irregularity in it, where the city district could have some type of funds that they could help the citizens of this county, that I will certainly appreciate it. That we have some type of way that they will allocate a said amount of money if it's nothing but forty thousand dollars where a man can spend forty thousand dollars in his district without [p. 83] getting the majority of the votes.

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA,
EASTERN DIVISION

ED PETER MACK, ET AL.,)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	89-T-459-E
vs.)	
RUSSELL COUNTY)	
COMMISSION, et al.,)	
)	
Defendants.)	

DEPOSITION OF ED P. MACK

The deposition of ED P. MACK was taken pursuant to stipulation and agreement before Jackie Parham, Court Reporter and Commissioners for the State of Alabama at Large, at the Russell County Courthouse, County Commission Hearing Room, Phenix City, Alabama, on Thursday, January 29, 1989, commencing at approximately 10:45 A.M.

[p. 17] Q. Now, you voted for the budget, too, and you had a copy of the budget at the time, did you not?

A. Right.

Q. You did vote in favor, did you not?

A. Right.

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA,
EASTERN DIVISION

ED PETER MACK, ET AL.,)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	89-T-459-E
vs.)	
RUSSELL COUNTY)	
COMMISSION, et al.,)	
Defendants.)	

DEPOSITION OF JEROME GRAY

The deposition of JEROME GRAY was taken pursuant to stipulation and agreement before Jackie Parham, Court Reporter and Commissioners for the State of Alabama at Large, at the law offices of Webb, Crumpton, McGregor, Sasser, Davis & Alley, Montgomery, Alabama, on Tuesday, December 12, 1989, commencing at approximately 10:35 a.m.

[p. 21] Q. What type of relief did Mr. Mack want?

A. In Mr. Mack's case it appears that he wants some discretionary money or some money from - being able to really - well, some money. Have a budget whereby he would be able to determine how some dollars are spent without everything being thrown in a common pot that he had - seemingly had no influence over how it was spent, particularly with other commissioners. The majority of whites could out-vote him.

Q. Have you ever heard that Mr. Mack had financial problems?

A. No, I have not. I don't see how it would be germane to this issue anyway even if he did.

Q. Okay. And what was Mr. Gosha's complaint?

A. Similar to Mr. Mack's.

Q. He wanted some discretionary money himself?

A. Right. Be able to influence how some dollars are spent, have some direct control over it themselves.
